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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Closed Captioning and Video)
Description of Video Programming)
)
Implementation of Section 305 of the)
Telecommunications Act of 1996)
)
Video Program Accessibility)
_____)

MM Docket No. 95-176

COMMENTS

CATHOLIC TELEVISION NETWORK

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COMMENTS

Pursuant to Section 1.415 of the Commission's Rules, the Catholic Television Network ("CTN") hereby submits its comments on the Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.¹

I. SUMMARY

The Catholic Television Network ("CTN") and its members are licensees of one or more Instructional Television Fixed Service ("ITFS") stations. CTN and its members fully support Congress's goal in adopting Section 713 "to ensure that all Americans ultimately have access to video services and programs." Based on the Commission's proposed rules for captioning, it appears that ITFS stations would not be obligated to caption instructional video programming. CTN supports this

¹ Closed Captioning and Video Description of Video Programming, FCC 97-4 (released Jan. 17, 1997).

result, given the financial burden of captioning and the ability of ITFS licensees to identify deaf and hearing-impaired students enrolled in their classes and to provide any necessary assistance.

Although ITFS stations may not be subject to captioning, CTN is providing comments on other issues which may affect ITFS licensees. CTN urges the Commission to consider the impact that its proposed captioning requirements may have on ITFS programmers operating on small production budgets if broadcast stations or cable systems which distribute instructional programming attempt to shift captioning requirements to ITFS programmers. CTN recommends that the Commission exempt ITFS service or, alternatively, the class of ITFS programming, from any captioning requirements.

Additionally, CTN recommends that no captioning requirement be imposed on video libraries maintained by ITFS licensees. Any such requirement would be excessive, unnecessary and prohibitively expensive.

II. INTRODUCTION TO CATHOLIC TELEVISION NETWORK

CTN is an association of 16 ITFS stations operated by Roman Catholic Dioceses and Archdioceses throughout the United States, including San Francisco Bay Area, Boston, Brooklyn, Chicago, Dallas, Detroit, Los Angeles, New York, Orange, Orlando, Rockwell Centre, San Bernardino, Youngstown, Buffalo, St. Louis, and Wichita.

Each of the members of CTN operates an accredited diocesan school system which offers formal, for-credit instruction for students enrolled in kindergarten through the 12th grade, as well as adult education classes. Each of the members of CTN is also the licensee of one or more ITFS stations and is authorized by the Commission to transmit ITFS programming to receive sites associated with its educational mission. In accordance with the Commission's Rules, CTN's members use their ITFS facilities to transmit "formal educational programming offered for credit to enrolled students."²

In addition to their ITFS programming activities, many of the members of CTN have entered into excess capacity lease agreements with local wireless cable system operators. Some CTN members also provide religious programming which is fed to the local cable television system and transmitted to its subscribers.

In this proceeding, the Commission is proposing to implement the requirements of Section 713 of the Telecommunications Act of 1996,³ and adopt regulations to ensure that "video programming first published or exhibited after the effective date of such regulations is fully accessible through the provision of closed captions."⁴ According to the Commission, this legislative mandate applies "to all types of video programming delivered electronically to consumers, regardless of the entity that provides the programming or the category of

² 47 C.F.R. § 74.931(a)(1).

³ Pub. L. 104-104, § 305, 110 Stat. 56, 126-28 (1996) (codified at 47 U.S.C. § 613).

⁴ 47 U.S.C. § 613(b)(1).

programming."⁵ As producers of instructional programming and religious programming which may be delivered to consumers over cable systems, CTN and its members have a substantial interest in the regulations adopted in this proceeding.

III. THE COMMISSION SHOULD EXCLUDE ITFS LICENSEES FROM THE DEFINITION OF "VIDEO PROGRAMMING PROVIDERS."

The Commission proposes to impose the responsibility for compliance with captioning requirements on "video programming providers," which it defines (NPRM, ¶ 28) as "all entities who provide video programming directly to a customer's home, regardless of the distribution technologies employed by such entities." This definition is consistent with the definition in the legislative history of the Act of "provider" as "the specific television station, cable operator, cable network or other service that provides programming to the public."⁶ According to the Commission (NPRM, ¶ 5), video programming providers would include broadcast television stations, cable television, direct-to-home satellite dishes, wireless cable systems, satellite master antenna television, and open video systems.

It appears from the Commission's definition of "video programming provider" that ITFS stations are not included among the parties that would be

⁵ NPRM, ¶ 5 (citing H.R. Rep. 104-458, 104th Cong., 2d Sess., at 183).

⁶ H.R. Rep. 104-204, 104th Cong., 2d Sess., at 114 (1995).

responsible for the captioning requirements. This is the correct result because ITFS stations generally do not deliver video programming directly to the public or consumers' homes. Rather, ITFS programming is distributed through a closed-circuit system to receive sites established by the licensee, and is primarily intended to be viewed only by students who have paid any relevant tuition and registered for the specific course in which the programming is used as instructional material. CTN recommends that, when it promulgates regulations for the captioning requirements, the Commission should make clear the exclusion of ITFS stations from the definition of "video programming provider."

IV. ITFS PROGRAMMING SHOULD BE EXEMPT FROM THE CAPTIONING REQUIREMENTS.

CTN and its members fully support Congress's goal in adopting Section 713 "to ensure that all Americans ultimately have access to video services and programs."⁷ As educators and ITFS licensees, the members of CTN are well aware that video programming is becoming an integral aspect of classroom instruction, and that it is critical for all students to have access to such programming when and if it is incorporated into an educational curriculum. However, as the Commission recognizes in the NPRM (§ 76), a local programmer, such as an ITFS station, "typically operates on a relatively small production budget." As the

⁷ H.R. Rep. 104-458, 104th Cong., 2d Sess., at 183 ("Conf. Report").

Commission also recognizes (NPRM, ¶¶ 18-22), captioning requires expenditure of substantial financial resources for equipment and services.

Although the Commission apparently does not intend to impose the captioning requirements on ITFS stations, there are circumstances in which ITFS programming is delivered to consumers over cable systems. The Commission anticipates that "our rules will result in video programming providers incorporating [captioning] requirements into their contracts with video producers and owners, regardless of which party has the obligation to comply with our rules." (NPRM, ¶ 30). Thus, it is possible that a video programming provider may seek to shift the burden of captioning to an ITFS licensee as a condition of carrying its instructional programming.

The Commission has sought comment on whether instructional programming should be exempted from the captioning requirements (NPRM, ¶ 76). If the responsibility for captioning were shifted to an ITFS station, it is likely that the cost of captioning would be economically burdensome for ITFS licensees. Accordingly, CTN recommends that the Commission exempt from the captioning requirements all ITFS programming that may be retransmitted over a broadcast station or cable system using any technology.

A. The Necessary Expenditures to Caption ITFS Programming
Militate Against a Captioning Requirement.

Captioning ITFS programming would impose substantial economic and administrative burdens on ITFS licensees. These costs may raise the cost per

program hour for captioning ITFS programming above that for commercial video systems, and may restrict the ability of ITFS licensees to offer "distance learning."

First, as the Commission recognizes (NPRM, ¶¶ 18-22), captioning is an expensive procedure, and educational institutions have limited resources to allocate to captioning.⁸ But, to the basic costs of captioning, ITFS programmers would be required to add costs for real-time captioning because many instructional programs are transmitted live from a studio classroom. This procedure not only raises the cost of captioning but also requires skilled stenocaptioners, whose services are more expensive.

Second, accurate captioning of classroom lectures would require a stenocaptioner with an expertise in particular fields of study. If the person responsible for captioning the lecture, whether live or taped, is not well versed in the subject being taught, then there is a risk that the captions will not accurately reflect the material. And, as the Commission notes, a stenocaptioner with such special expertise will be more difficult to locate and more expensive to employ,⁹ or there may be additional lead time required for the captioner to learn the material.

⁸ It should also be noted that a captioning requirement would not necessarily relieve educators from financial obligations to provide other procedures to achieve accessibility for which captioning may not be a substitute.

⁹ Regarding live captioning, the Commission notes that "[i]t is unclear that the number of stenocaptioners with advanced training to provide such captions at the highest quality levels is sufficient at this time to meet the expanded demand for stenocaptioning services that our proposed rules will engender." NPRM, ¶ 113. This obstacle is magnified in the case of ITFS programming for which captioners must also be familiar with the subject matter.

Third, effective classroom instruction often requires the use of visual aids, on which the camera is trained during programming,¹⁰ while the lecturer continues to talk. It is not clear how an ITFS programmer would caption its programs without damaging the clarity of such visual displays. If a student cannot see the graphic on the screen or decipher the instructor's notes on the blackboard because they are obscured by captions, then the captions would do more harm than good. Moreover, it would be difficult for any viewer to follow two different textual fields: the lecturer's notes on a viewgraph and the captioning display of the lecturer's ongoing discussion.

B. ITFS Programmers Can Ensure Accessibility to All Deaf and Hearing-Impaired Students.

The stated goal of Section 713 of the Act is to make video programming accessible to the deaf and hearing-impaired. However, the primary targets of this legislation are commercial broadcast stations and cable systems which make available a uniform schedule of video programming, financed by advertising or monthly subscriber fees, to all consumers in their markets. In contrast, ITFS programming is not generally available to the public. The primary purpose of ITFS programming is distribution through a closed system to students who are registered for the specific course in which the programming is used as instructional material.

¹⁰ See NPRM, ¶ 73 (proposing to exempt "video programming that is primarily textual").

These distinctions between commercial and ITFS video programming are significant for imposing a captioning requirement. For its primary purpose, ITFS programming is transmitted by educational institutions to enrolled students, and so, the licensee can easily determine whether there is a need to accommodate deaf or hearing-impaired students at its receive site. If the burden of captioning were shifted to ITFS programmers, the result would be captioning where there may be no specific need. Under these circumstances, captioning would constitute an extravagant allocation of educational institutions' scarce resources to no benefit -- educational or otherwise. Unless instructional programming is exempt from the captioning requirement, it may no longer be available for distribution over cable systems to the detriment of viewers and the ITFS programmer.

V. THE COMMISSION SHOULD ADOPT AN EXEMPTION FOR ALL VIDEO PROGRAMMING TRANSMITTED AS INSTRUCTIONAL MATERIAL.

Section 713 permits the Commission to exempt ITFS programming from any captioning regulations by adopting an exemption for the class of ITFS programming.¹¹ CTN strongly recommends that the Commission adopt an exemption for ITFS programming that is used for curriculum-based educational purposes, even if that programming is distributed over a commercial cable system. As discussed above, "the economic burden of captioning [ITFS programming] outweighs the benefits to be derived from captioning and, in some cases, the

¹¹ 47 U.S.C. § 613(d)(1).

complexity of adding the captions." (NPRM, ¶ 70.) The fact that some ITFS programming is distributed over a cable system does not necessarily change this evaluation.

For example, CTN recommends a regulation which provides:

Video programming which is utilized primarily as instructional material as defined in Section 74.931(a-d) of the Commission's Rules and is transmitted by or on behalf of an ITFS licensee to its registered receive sites on either frequencies licensed to the video programming provider or frequencies licensed or leased to a wireless cable operator with whom the ITFS licensee has entered into an excess capacity lease agreement is exempt from any captioning requirement. When programming transmitted on ITFS frequencies is customarily offered as part of the regularly-scheduled commercial programming of a wireless cable operator, then the regulations applicable to wireless cable systems shall apply; provided that, incidental transmission of instructional programming to subscribers of a wireless cable system shall not be deemed regularly-scheduled commercial programming.

CTN believes that such an exemption strikes the appropriate accommodation for instructional programming, and ensures that the exemption will not be used to avoid a captioning requirement.

CTN recommends that this exemption cover all video programming which falls within the definition of Sections 74.931(a-d) which may be transmitted over a cable system. Any such programming would generally be produced on a relatively low budget and targeted to a very small niche market (e.g., instructional or religious programming channels). The Commission has already recognized (NPRM, ¶ 76) that imposition of the cost of captioning on the ITFS licensee may make such programming infeasible. The technology used for delivery to viewers does not change this conclusion.

VI. NO CAPTIONING REQUIREMENT SHOULD BE IMPOSED
ON VIDEO LIBRARIES MAINTAINED BY ITFS LICENSEES.

The Commission has requested comment (NPRM, ¶¶ 51-62) on how to implement Congress's direction in Section 713 that "video programming providers or owners maximize the accessibility of video programming first published or exhibited prior to the effective date" of the regulations adopted in this proceeding.¹² As the Commission recognizes, there is an "enormous amount" of uncaptioned, video programming (NPRM, ¶ 57), and a mandatory captioning requirement "could place a significant burden on the owners and providers" of such programs (NPRM, ¶ 58). The members of CTN own substantial video libraries, and agree with the Commission's conclusion (NPRM, ¶ 58) that it would be inappropriate to mandate captioning of all such programming.

Although it has recognized the significant burden on owners of such programming, the Commission is proposing to establish a percentage requirement for captioning of previously-published video programming and deadlines for a transition schedule. (NPRM, ¶ 58). CTN submits that, for the reasons outlined below, any such requirements as applied to ITFS licensees would be unworkable and unnecessary and so should not be adopted.

First, it is not at all clear from the discussion in the NPRM what the Commission defines as "library programming" for the purpose of imposing any requirements for captioning. The Commission notes (NPRM, ¶ 5) that Section 713

¹² 47 U.S.C. § 613(b)(2).

applies to "all types of video programming delivered electronically to consumers." However, its discussion of "library programming" appears to encompass any video programming first published or exhibited prior to the effective date of the closed captioning regulations (NPRM, ¶ 51).

The "video library" of an ITFS entity may include thousands of titles, not all of which are delivered electronically to enrolled students over the ITFS system. For example, instructors commonly request addition of educational programming or of internally-produced recordings of class lectures to video library collections so that they can be used in class independently of the ITFS facility, or so that students can view them individually. CTN submits that it would be inappropriate for the Commission to impose any blanket requirement on owners of video programming to caption programming that is not used for distribution by video programming providers.¹³

Second, video libraries held by educational institutions are, by necessity, always being updated to stay current. Over time, previously published programming will be archived in favor of newer, captioned programs. Ultimately, the goal of maximizing accessibility of educational programming will be reached without imposing a percentage requirement or deadlines. In any event, it is

¹³ It is not clear how the Commission would impose captioning requirements on educational institutions that are not licensed to provide radio transmissions. It would be inequitable for the ITFS licensees to be required to caption a percentage of video programming in their libraries while non-licensee institutions are not so required.

illogical for the Commission to impose a mandatory captioning requirement on programming that may be obsolete in a few years.

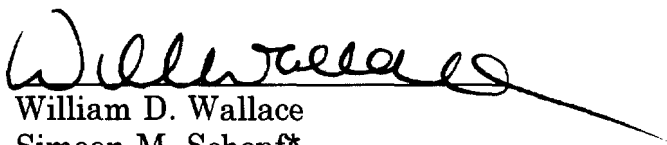
Third, the Commission should not impose a captioning requirement on library programming of ITFS licensees because of the cost, which the Commission has itself recognized as a significant burden. Even without such a requirement, the market will encourage educational institutions to replace frequently-transmitted programming with captioned versions when available. The Commission simply does not need to intercede in the educational policies of ITFS licensees nor their internal guidelines for providing accessibility to deaf and hearing-impaired students.

VII. CONCLUSION

Accordingly, for the reasons set forth above, CTN urges the Commission to adopt rules governing the captioning of video programming consistent with the views expressed herein.

Respectfully submitted,

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